

b.) Remarks

Claims 1-13 are pending in this application. Claims 1-13 are rejected.

In "Response to the Arguments" section of the Office Action, The Patent Office stated that "the claim limitations have been amended and no longer require a frame". This is incorrect. Amendments of Claim 1 have not eliminated the frame as a claim element. Claim 1 as pending in the application reads:

"a first coverslip and a second coverslip immovably secured in a frame and forming a cavity between them..."

(before amendment the claim read "a frame which holds the first and the second coverslip and thereby provides a cavity between the first and the second coverslip"). It is clear that the frame element has not been deleted.

Furthermore, Applicant asserts that Patent Office's interpretation of "sealingly engaged" being a functionally equivalent to "immovable" is incorrect and not supported by evidence. The idea that something will "likely" happen (the sealed element will likely break) if a sealed element is moved is not evidence of functional equivalence in any way.

Merriam-Webster collegiate dictionary defines immovable as "incapable of being moved", or, more broadly, "not moving or not intended to be moved"¹. Which is what Claim 1 is directed to: when the first and the second cover slips are secured in a frame, they are secured there immovably. Meaning that the first and the second coverslips are incapable of moving (and not intended to be moved) when they are secured in that frame. Since the nature of the coverslips in the frame is such that they can't be moved and are not intended to be moved, the fact that some seal is likely to break (not all seals,

¹ <http://www.m-w.com/dictionary/immovable>

apparently) is irrelevant to the arrangement of the present invention and cannot serve as a basis for a functional equivalent.

Therefore, Applicant again draws the attention of the Patent Office to the fact that Eastman does not disclose a first and a second coverslips immovably secured in a frame. What the Patent Office called a first coverslip (26) actually is a thin pliable membrane (26) in the Eastman patent which is bendable, and, therefore, movable. That pliable membrane is bent to contact window (16) and to be heat bonded or sonic welded to that window (16), as shown in Fig. 9 and described in Col. 8, line 58 – Col. 9 line 1 of Eastman. The Eastman “pliable membrane bent and bonded to the window” arrangement is obviously “bendable” and has nothing to do with the first and the second coverslips immovably secured in a frame and forming a cavity between them in that immovable configuration, as claimed in amended independent Claim 1.

With regard to the cavity element of Claim 1, the Patent Office stated that Applicant does not require the entire open area between the coverslips to be defined as a cavity. This statement has no merit. Claim 1 states that the first and the second coverslips are immovably secured in the frame and form a cavity between them. As further claimed in Claim 1, that same cavity is uniformly filled with a medium. Applicant doesn’t claim whether that cavity is open space or not, because it is irrelevant. What Applicant does claim is that whichever cavity was formed between the first and the second coverslips, that cavity is uniformly filled. If Claim 1 intended to cover an embodiment when only a portion of the cavity is filled, the Claim would have said so (“partially filled”, for example). The plain meaning of Claim 1 as it is worded now is that the cavity between the coverslips is filled with a medium, not partially, not with a medium having a particular surface tension, but fully.

Applicant’s assertion is, again, supported by the dictionary definitions of the word “filled”. Merriam-Webster collegiate dictionary defines “filled” with regard to fluids as “to put into as much as can be held or conveniently contained”, “to occupy the whole

of². Therefore, the assertion of the Patent Office regarding the element of a uniformly filled cavity is unsupported by evidence and should be withdrawn.

Applicant repeats the arguments and assertions presented in the response dated December 1, 2006. Applicant believes that the present application is in condition for allowance. A Notice of Allowance is respectfully solicited. Should any questions arise, the Examiner is encouraged to contact the undersigned.

Respectfully submitted,
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² <http://www.m-w.com/dictionary/filled>